

Before the
Federal Communications Commission
Washington, D.C. 20554

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JAN 18 1994

In the Matter of)

)
)
Amendment of Section 76.51)
of the Commission's Rules to)
Include Newton, New Jersey in)
the Market Currently Designated)
the "New York, New York-Linden-)
Paterson-Newark, New Jersey")
Market)

MM Docket No. 93-290

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Mass Media Bureau

REPLY COMMENTS OF MOUNTAIN BROADCASTING CORPORATION

Respectfully submitted,

MOUNTAIN BROADCASTING
CORPORATION

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January 18, 1994

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SUMMARY

Mountain Broadcasting Corporation ("Mountain"), petitioner in this rulemaking and licensee of WMBC-TV, which operates on Channel 63 in Newton, New Jersey, urges the Commission to act expeditiously to amend Section 76.51 of its rules to redesignate the "New York, New York - Linden - Paterson - Newark, New Jersey" market as the "New York, New York - Linden - Paterson - Newark - Newton, New Jersey" market. None of the opposing parties, all of whom are cable systems that compete directly with WMBC-TV for advertisers and viewers, has asserted any contention that diminishes Mountain's strong demonstration of commonality between Newton and the New York market as a whole or negated Mountain's satisfaction of the Commission's four-part test for rehyphenating the market.

Newton, New Jersey is within Arbitron's designated New York Area of Dominant Influence ("ADI"). The geographic distance between Newton and the other designated communities in the market is at most forty-five miles, well within the parameters allowed in other designated cases. WMBC-TV's Grade A contour completely encompasses three of the New York markets' four designated communities, its Grade B contour reaches into the heart of the fourth, and its Grade B contour overlaps the Grade B contours of all the stations currently licensed to the four designated communities. Moreover, Mountain is in the process of increasing WMBC-TV's Grade B coverage area by ten percent. The signal contour showing that Mountain has presented is consistent with those in numerous precedents redesignating other markets.

The competitive disadvantage at which WMBC-TV operates vis-a-vis other more powerful stations in the New York ADI in attracting viewers and advertisers and dealing with programmers presents a particularized need for this requested hyphenation. The competitive disadvantage is exacerbated by the estimated \$9 million in copyright fee reimbursement WMBC-TV will have to pay semi-annually for carriage on cable systems in its ADI, absent rehyphenation. Mountain has also demonstrated the unquantifiable public benefits that will accrue from greater dissemination of its unique family-oriented format and foreign-language programming for the Asian population of the New York ADI. The parties opposed to rehyphenation have not submitted evidence undercutting these assertions of need and benefit.

Finally, the opposing parties' attempts to distract the Commission from its proposed rehyphenation by asserting peripheral procedural arguments are counterproductive. Contrary to their claims, rehyphenation of the New York market will not alter the statutory balance between mandatory signal carriage rights and copyright, interfere with an ongoing Copyright Office proceeding, or prejudice the FCC's consideration of a cable special relief petition filed by one of the opposing parties. Rather, these arguments only emphasize that WMBC-TV's redesignation request is exactly the type of limited rulemaking petition Congress intended in adopting the 1992 Cable Act and the Commission openly invited in its rulemaking proceeding implementing the Act.

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TO: Chief, Mass Media Bureau

REPLY COMMENTS OF MOUNTAIN BROADCASTING CORPORATION

Mountain Broadcasting Corporation ("Mountain"), petitioner in the above-captioned rulemaking and licensee of television broadcast station WMBC-TV, Channel 63, Newton, New Jersey ("WMBC-TV"), by its attorneys, hereby replies to the comments of Cablevision Systems Corporation ("Cablevision"), Time Warner New York City Cable Group ("TWC"), and U.S. Cablevision Corporation ("USC") filed in the above-captioned rulemaking proceeding.¹

As the Commission observed in the Notice of Proposed Rule Making, DA 93-1349, released November 16, 1993, WMBC-TV competes for audience and advertisers throughout much of the currently designated New York, New York - Linden - Paterson - Newark, New Jersey television market. As the NPRM also acknowledged, Mountain's petition for rulemaking has established commonality between Newton and the New York City market as a whole and has made clear that the proposal to add Newton to the market

¹ Although three other parties, in addition to Mountain, filed comments, they did not oppose Mountain's request. As a result, their three sets of comments require no further discussion from Mountain.

designation comports with the Commission's policies regarding redesignation of a hyphenated television market. In their comments, the three cable systems opposed to such rehyphenation (the "Cable Commenters") -- all of which compete with WMBC-TV for viewing audiences and especially for advertisers -- have failed to present any reason to disturb the Commission's initial conclusion that rehyphenation is appropriate in this case.

I. Opposing Parties Have Not Asserted Any Facts or Arguments That Diminish Mountain's Strong Demonstration That Newton, New Jersey Is Part of the New York City Market or That Undercut Its Satisfaction of the Four-Part Test for Rehyphenating the Market.

In its petition for rulemaking, as well as its comments, Mountain presented evidence satisfying each of the four factors that the FCC customarily evaluates in deciding whether to redesignate a market.² One-by-one, the cable commenters unsuccessfully try to negate each showing.

First, despite the fact that WMBC-TV's Grade A contour completely encompasses three of the market's four designated communities, its Grade B contour reaches into the heart of the fourth, and its Grade B contour overlaps the Grade B contours of

² These factors include

- (1) the distance between the proposed community and the market-designated communities;
- (2) the extent that redesignation to include the proposed community would allow the station additional rights beyond its Grade B contour;
- (3) the particularized need of the station; and
- (4) the resulting benefit to the public from redesignation.

all the stations currently licensed to the four designated communities, the Cable Commenters claim that rehyphenation is unjustified because Newton is forty-five miles from New York City and because its Grade B contour does not completely encompass the geographically large New York ADI.³ The Cable Commenters' mileage-based objection ignores the fact that the Commission has designated a number of other major hyphenated markets to include population centers that are considerably farther apart. For instance, in the Orlando - Daytona Beach - Melbourne - Cocoa market, Orlando is approximately 51 miles from Daytona Beach and approximately 60 miles from Melbourne.⁴ The distance between Daytona Beach and Melbourne is approximately 84 miles.⁵ Los Angeles is approximately 54 miles from San Bernadino, another town listed as a designated community in the Los Angeles

³ Exhibit C to Mountain's petition set forth WMBC-TV's city grade, Grade A, and Grade B contours. Today, Mountain is filing an application for modification of its facilities, which will increase the coverage area within its Grade B contour by 9.9, or almost 10, percent. See Exhibit A for a depiction of the new contours. WMBC-TV's new Grade B contour will provide service to 10,954,430 persons, an increase of 15.5 percent over the 9,482,899 persons reached by the station's current Grade B contour. See declaration of WMBC-TV's consulting engineer at Exhibit A.

Appended as Exhibit B to these reply comments are contour maps for the stations licensed to the communities already listed in the market designation. These stations include WABC-TV, WCBS-TV, WNBC-TV, WNYW, and WPIX, all of which are licensed to New York City; WHSE, which is licensed to Newark; WNJU, which is licensed to Linden; and WXTV, which is licensed to Paterson. As the copies of their service areas show, all of these stations place a Grade B signal over Newton, New Jersey.

⁴ Rand McNally Commercial Atlas & Marketing Guide, p. 154 (1994 edition).

⁵ Id. See Major Television Markets (Orlando - Daytona Beach - Melbourne - Cocoa, Florida), 57 R.R. 2d 685 (1985).

market.⁶ In the Springfield - Decatur - Champaign, Illinois market, Springfield is approximately 78 miles from Champaign.⁷ In the Kalamazoo - Grand Rapids - Battle Creek, Michigan market, Kalamazoo is approximately 45 miles from Grand Rapids, which in turn is approximately 53 miles from Battle Creek,⁸ and in the Lincoln - Hastings - Kearney, Nebraska market, Lincoln is approximately 131 miles from Hastings and 95 miles from Kearney.⁹ Another recently completed Commission proceeding added Rome to the Atlanta market designation; Rome is approximately 57 miles from Atlanta.¹⁰ The 45-mile distance

⁶ Id. at 148-149.

⁷ Id. at 162.

⁸ Id. at 181.

⁹ Id. at 192-93.

¹⁰ Id. at 156. See Report and Order (MM Dkt. Nos. 92-259 et al.) ("1992 Cable Report and Order"), 72 RR 2d 204, 223. TWC, at pages 4-5 of its comments, makes much of the fact that in the Clermont, Florida case (Press Broadcasting) cited by Mountain, the Clermont station's transmitter was collocated with the transmitter of a Daytona Beach television station. TWC proceeds, in note 7 of its comments, to cite cases where collocation was taken into account by the Commission in reaching its decision to designate. Contrary to TWC's implication, however, collocation, although relevant, is not a prerequisite to rehyphenation as the Rome, Georgia case and the Melbourne, Florida cases make clear. See id.; Notice of Proposed Rule Making (MM Dkt. No. 92-295) (Rome), 7 FCC Rcd 8591, 8592 (1992), and Major Television Markets (Orlando - Daytona Beach - Melbourne - Cocoa, Florida), 57 RR 2d at 689, respectively, both of which added communities to a market designation where the distance between population centers was greater than in this case and collocation was absent. In the Melbourne case in particular, a cable opponent noted that Daytona Beach, one of the already designated communities, was well outside the Melbourne station's Grade B contour. Id. Nonetheless, the designation was changed to include Melbourne. In this case, none of the designated population centers are "well outside" WMBC-TV's Grade B contour.

between Newton, New Jersey, and New York City is clearly within these parameters.

Rehyphenation of the New York market to include Newton based on the signal contour data Mountain has presented is also consistent with numerous Commission precedents defining television markets. The Commission has long recognized television as "an area-wide rather than a localized service."¹¹ This regional character is dictated by the basic economics of television operation, which "involve considerably greater capital investments [than radio stations], and require larger audiences to attract more advertising revenues."¹² Thus, television stations licensed to smaller communities, such as Newton, while directly serving that local community, must also attract audiences and advertisers from the rest of the ADI to achieve economic viability.

The Commission also specifically noted the large size of television markets when it first established the initial designated market list:

Because of the structure of these markets, including the terrain and the population distribution, portions of the market are occasionally located beyond the Grade B contour of some market stations. Consequently, we are adopting this rule in order to help equalize competition between stations in markets of this type, and to assure that stations will have access to cable

¹¹ St. Louis Telecast, Inc., 22 FCC 625, 713 (1957).

¹² Cleveland Television Corp., 91 FCC 2d 1129, 1137 (Rev. Bd. 1982), rev. denied, FCC 83-235 (1983), aff'd, 732 F. 2d 962 (D.C. Cir. 1984).

subscribers in the market and that cable subscribers will have access to all stations in the market.¹³

Rehyphenation of the New York market to include Newton is consistent with this recognition that equalizing competition may at times involve slight extensions of carriage beyond Grade B contours. In short, the Cable Commenters have not presented any information to negate the Commission's initial conclusion that Mountain has satisfied the first two prongs of the traditional four-part rehyphenation test.

In its petition and comments, Mountain also demonstrated that it operates at a competitive disadvantage vis-a-vis other stations in the New York ADI, particularly those stations licensed to the other designated communities in the market which are entitled to royalty-free mandatory carriage on cable systems throughout the entire New York ADI. To highlight this competitive disadvantage, Mountain noted that to attain mandatory signal carriage on many of the same systems, it would have to reimburse the various cable operators for an estimated \$9 million that they claim is necessary to cover the increased semi-annual copyright fee payments that would result from carriage of WMBC-TV.

The Cable Commenters allege that Mountain's discussion of its situation has not demonstrated a "particularized need" to support redesignation, that its showing has focused on only an

¹³ Cable Television Report and Order, 36 FCC 2d 143, 176 (1972). As the Commission noted in the Melbourne decision, the Commission was aware in 1972 in establishing its "must-carry" and designated market scheme "that it was aiding stations where Grade B contours were limited by extending their carriage to areas deemed necessary to their development. See Cable Television Report and Order, *supra*, at 174." Major Television Markets (Orlando - Daytona Beach - Melbourne - Cocoa, Fla.), 57 RR 2d at 693.

insufficient private need.¹⁴ Even if Mountain's pleadings to date had presented only such a "private" need, these arguments ignore that on several recent occasions, the Commission has repeatedly held that unequal burdens on competing stations caused by the application of the copyright laws create a competitive disadvantage that is sufficient to establish the requisite "particularized need" and therefore warrant redesignation.¹⁵ Nonetheless, although this reimbursement obligation is certainly of key concern to Mountain, it is not the only reason rehyphenation is necessary. As a new independent UHF station, WMBC-TV is unquestionably competitively disadvantaged vis-a-vis the more established and powerful New York stations in its attempts to garner advertisers and viewers and deal with program suppliers. In previous market redesignation decisions, the Commission has specifically recognized a need "to help smaller stations compete in their market."¹⁶

¹⁴ See USC Comments at 3-4.

¹⁵ See, e.g., Report and Order (MM Dkt. No. 93-233) (Pine Bluff), DA 93-1429, released Nov. 30, 1993, in which the only "particularized need" related to relief from copyright liability. Comments of Agape Church, Inc., filed May 6, 1993, at 7-8; Report and Order (MM Dkt. No. 93-207) (Riverside), DA 93-1444, released Dec. 7, 1993, where again petitioner had demonstrated that without redesignation it "could unfairly by [sic] required to pay substantial copyright royalty reimbursements not charged against other stations in the market," Comments of Fouce Amusement Enterprises, Inc., filed Aug. 18, 1993, at 3. See also, Notice of Proposed Rulemaking (MM Dkt. No. 92-306), (Clermont, Florida), 8 FCC Rcd 94, 95 (1992). ("Redesignation of the market . . . will permit market-area cable systems to carry WKCF on an equal basis with other television stations licensed to communities within the market without incurring 'distant signal' copyright liability.")

¹⁶ Major Television Markets (Fresno - Visalia, California), 53 RR 2d at 1125 (1985). Attached as Exhibit C are letters from various parties that recognize that, despite WMBC-TV's status as a
(continued...)

Most significantly, the Cable Commenters touch not at all on the public benefits Mountain demonstrated would accrue if Newton were added to the designation of the New York market. Contrary to Cable Commenters' claims, Mountain provides and continues to develop programming of broad appeal throughout the New York ADI.

As noted in its petition and comments, WMBC-TV occupies a special niche in the New York ADI. WMBC-TV offers an alternative family-oriented format which is directly responsive to Congressional efforts to provide additional children's programming and limit violent material.¹⁷ In addition, Mountain's voting stock is owned entirely by Asian Americans, and the station plans, as improving finances permit, to offer more and more community-oriented programming and foreign-language programming for the New York ADI's substantial Asian population.¹⁸ Currently, station resources permit provision of one hour of Korean-language programming on Sunday mornings. The licensee is also developing an "Asian Network," through which it hopes to bring even more extensive foreign-language programming to the New York ADI. The licensee's officers previously produced

¹⁶(...continued)

small, independent Newton, New Jersey station, its business is still governed by the competitive realities of the New York market.

¹⁷ A list of WMBC-TV's children's programs was appended to its comments.

¹⁸ Currently, the Asian population in the counties that comprise the New York ADI represents almost five percent of the ADI's total population. (See 1990 Census data appended as Exhibit D.) Five of the counties in the ADI have Asian populations well in excess of the five percent level. Koreans, in particular, comprise a substantial part of the ADI's Asian population. Other video outlets in the New York ADI do not currently meet the Asian population's need for specialized programming.

Korean programming aired by stations and cable systems in New Jersey, New York, and Los Angeles, and the licensee plans to draw on this experience in establishing the new network.

As an important step toward fulfilling these goals, Mountain yesterday opened new auxiliary studios and offices in Manhattan. The fully equipped production studios will enable Mountain to provide more foreign-language and family-oriented programming, and the Manhattan location will assist in WMBC-TV's efforts to broaden its advertising base.

With respect to the Commission's four-part test for redesignation of a hyphenated market, the bottom line remains that Mountain has demonstrated that, even as a fledgling market player, it competes for audiences, programming, and advertising throughout much of the New York, New York - Linden - Paterson, New Jersey television market. On a daily basis, to the extent its facilities allow, it is taking steps to improve its competitive position. The fact that it has the potential to emerge as a serious competitive threat is demonstrated by the strong and vociferous opposition its rehyphenation proposal has elicited. Given this competition and the toehold that WMBC-TV has established, it is harmful not just to WMBC-TV but also to the viewing public for the Commission's rules to continue to apply differently to WMBC-TV, saddling it with the financial burdens of competing in the largest major market absent any of the regulatory benefits.

II. Contrary to the Cable Commenters' Claims, Redesignation of the New York Market To Include Newton Will Not Upset the Asserted Balance Between Mandatory Signal Carriage Rights and Copyright, Interfere with an Ongoing Copyright Office Proceeding, or Prejudice the FCC's Consideration of Cablevision's Pending Petition for Special Relief.

Unable to demonstrate that Mountain's rehyphenation proposal does not satisfy the Commission's standards for redesignation, the Cable Commenters assert that Mountain's requested relief should be denied for a variety of makeweight reasons that not only distort the provisions of and intent behind the 1992 Cable Act but superciliously question the Commission's ability to implement the legislation.

In adopting Section 534 of the 1992 Act, Congress made clear that television stations were entitled to "must-carry" rights throughout their ADI's, provided the stations delivered an adequate quality signal to cable systems' principal headends or reimbursed cable systems for any increased copyright fees they incurred as a result of the mandatory carriage.¹⁹ Cable Commenters claim that rehyphenation of the New York market to include Newton will somehow provide WMBC-TV with more rights than this section was intended to confer.

This argument suffers from a basic failure to recognize that at the same time that Congress mandated "must-carry" rights and provided for the qualifications noted above, it, in equally significant terms, ordered the FCC on an expedited basis to update the major market television list set forth in Section

¹⁹ Sections 614(a), 614(h)(1)(B)(ii) and (iii) of the 1992 Cable Act, 47 U.S.C.A. §§ 534(a), 534(h)(1)(B)(ii) and (iii).

76.51 of its rules.²⁰ As the FCC has stated in comments submitted to the Copyright office, although legislative history of this directive is somewhat limited, the available explanations make clear that Congress recognized that changes to Section 76.51 were intended to have copyright consequences.²¹ Any contention

²⁰ Section 614(f) of the 1992 Cable Act, 47 U.S.C.A. § 534(f).

²¹ As the FCC recently explained in comments it filed with the Copyright Office on that office's inquiry into the impact of Section 76.51 rule changes,

[T]he legislative history on the relevant provisions of the 1992 Cable Act lends support for the conclusion that changes in markets by the FCC were intended to have copyright consequences. As noted in the Notice, the language of Section 614(f) of the 1992 Cable Act requiring the FCC to update Section 76.51 was offered by Rep. Bob McEwen as part of a package of amendments submitted shortly before House approval of the Act. In a statement accompanying the amendment, Rep. John Dingell, Chairman of the House Committee on Energy and Commerce, stated:

The McEwen amendment requires the FCC to update the list of the Nation's television markets in order to clarify whether a signal of a television station is considered to be local or distant.^{19/}

^{19/}See Amendment No. 14, 138 Cong. Rec. H6529 (daily ed. July 23, 1992). Congressman McEwen represents the Sixth District of Ohio in which is located Chillicothe, the community of license of television station WWAT. On April 19, 1988, the licensee of WWAT filed a petition for rulemaking with the Commission requesting that Section 76.51 of our Rules be amended to include Chillicothe as a "hyphenated" community in the Columbus, Ohio, television market, explicitly urging that such action was necessary to permit the station's signal to be carried on a "copyright royalty-free basis" as a local signal in the market area for which it purchased programming rights The Commission's deferral of this and similar petitions from 1987 through 1992, during the pendency of MM Docket 87-24, was an evident impetus for the inclusion of Section 614(f) in the 1992 Cable Act.

that redesignation of the New York market will upset the balance that the Congress created in placing qualifications on mandatory signal carriage rights naively ignores the significance of this separate directive.²²

TWC and USC also mistakenly claim that redesignation will interfere with the Copyright Office's current proceeding studying the impact of changes in Section 76.51 on the cable compulsory license.²³ The FCC is fully aware of that proceeding, having, as noted above, filed comments with that office expressing its views on the legislative underpinnings of the FCC's latest modifications to the market designation list. The FCC, although already faced with arguments similar to those presented by TWC and USC, has not found it necessary to delay resolution of the many other rehyphenation requests with which it has been presented over the last several months. There is no reason why

²² In the same comments to the Copyright Office, the FCC listed other indications that point to or are entirely consistent with Congressional intent that changes resulting from inclusion of subsection 614(f) in the 1992 Cable Act were intended to have both communications and compulsory license ramifications. These indications include the sequence of events in the mid-1980s involving hyphenation of the Orlando market by the FCC, the acceptance by the Copyright Office for copyright purposes of that amendment, and the fact that the Copyright Office specifically brought the history of the Orlando case to Congress' attention in a special report submitted during the pendency of the legislation that led to the 1992 Cable Act. The fact that changes in the Communications Act might have consequences in the way the copyright compulsory license scheme operates is not inconsistent with the statement in one House Committee report, see Cablevision Comments at n. 21, that "[n]othing in this provision [Section 534] is intended to affect federal copyright law." The copyright consequences of amending Section 76.51 do not change the underlying compulsory license mechanism or amend Title 17 of the U.S. Code.

²³ See Notice of Inquiry - Update to the Major Television Market List, 58 Fed. Reg. 34,594 (Copyright Office, June 28, 1993).

this rehyphenation proceeding should be treated any differently.

Similarly, Cablevision also claims that grant of WMBC-TV's request will somehow "prejudice" the cable special relief petition that it filed on May 28, 1993, seeking to modify the New York ADI so as to delete certain communities from WMBC-TV's market for "must-carry" purposes and thus deny WMBC-TV its statutory right to carriage in cable systems serving those communities.²⁴ In filing that petition, Cablevision doubtlessly sought to try to take advantage of another section in the 1992 Cable Act which discusses the availability of stays while such petitions are pending.²⁵ Under this provision, Cablevision presumably believes that WMBC-TV's rights to carriage on the system cannot be altered pending Commission resolution of that petition. Given this statutory provision, of which Cablevision already seems to be taking advantage, its expression of concern about "extraordinary and unnecessary service disruptions" to its customers is totally unfounded and somewhat perplexing. Moreover, in initiating this docket the Commission gave specific assurances that its outcome would be without prejudice to the special relief proceeding, a caution it has issued not only in this case but in redesignation proceedings involving another

²⁴ Petition for Special Relief, CSR No. 3873-A, filed May 28, 1993.

²⁵ Section 614(h)(1)(C)(iii) of the Cable Act, 47 U.S.C.A. § 534(h)(1)(C)(iii), which the FCC has interpreted as meaning that cable operators will be required to maintain the status quo with respect to signal carriage during the pendency of a special relief petition. 1992 Cable Report and Order at 222. Since Cablevision filed its petition prior to the June 2, 1993 date that it was required to commence carriage of WMBC-TV, Cablevision undoubtedly thinks that it is not required to add WMBC-TV until FCC resolution of its special relief petition.

market where similar ADI modification petitions have been filed.²⁶

Cable Commenters' arguments aside, WMBC-TV's redesignation request is exactly the type of limited rulemaking petition that Congress intended and the Commission openly invited in the 1991 Cable Report and Order, when it eschewed "wholesale changes" or "reranking" and stated that it would consider modifications to the Section 76.51 list on a case-by-case basis.²⁷ Cable Commenters' peripheral procedural arguments, that do not go to the merits of Mountain's case, should not distract the Commission from its proposed course.²⁸

²⁶ Report and Order (MM Dkt. No. 93-207) (Riverside), supra note 15, at ¶ 5; Notice of Proposed Rule Making (MM Dkt. No. 93-304) (Anaheim), DA 93-1520, released Dec. 21, 1993 at ¶ 8.

²⁷ 1992 Cable Report and Order at 223.

²⁸ In the NPRM commencing this docket, the Commission proposed several alternatives to rehyphenation. NPRM at ¶¶ 14-16. With respect to its inquiry whether a waiver of Section 73.658(m) of the Commission's rules, 47 C.F.R. § 73.658(m), would provide sufficient correction to the competitive inequities encountered by WMBC-TV, Mountain agrees with the comments of WLIG-TV, Inc., at pages 10-11, that syndicated exclusivity protection without hyphenation is inadequate. Hyphenation is essential for WMBC-TV to exercise its statutory mandatory signal carriage rights. With respect to the Commission's proposal that it confer redesignation rights on WMBC-TV and WLIG-TV but only in a portion of the New York ADI, again Mountain agrees with WLIG-TV, Inc.'s comments, at pages 8-10, that such a proposal is also not an effective solution. Indeed, such "partial hyphenation" would exacerbate the competitive inequality by giving the New York City stations, which are already the economically most powerful stations in the ADI, a form of "super rights" throughout the entire ADI. Smaller stations, like WMBC-TV, that must compete throughout the same ADI for viewers, advertisers, and programming, would be able to claim rehyphenation rights in only one portion of the ADI. The powerful stations would achieve even more market power. Mountain takes no position on the Commission's proposal to add other additional communities, besides Newton, to the market designation.

III. Conclusion

For the reasons noted in its petition, its initial comments, and these reply comments, Mountain respectfully urges the Commission to act expeditiously to amend Section 76.51 of its rules to include Newton, New Jersey in the designation of the New York market.

Respectfully submitted,

MOUNTAIN BROADCASTING CORPORATION

By 

M. Anne Swanson

of

Koteen & Naftalin
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1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 467-5700

Its Attorneys

January 18, 1994



DECLARATION

I, John C. Kean, do hereby declare and state under penalty of perjury that the following is true and correct:

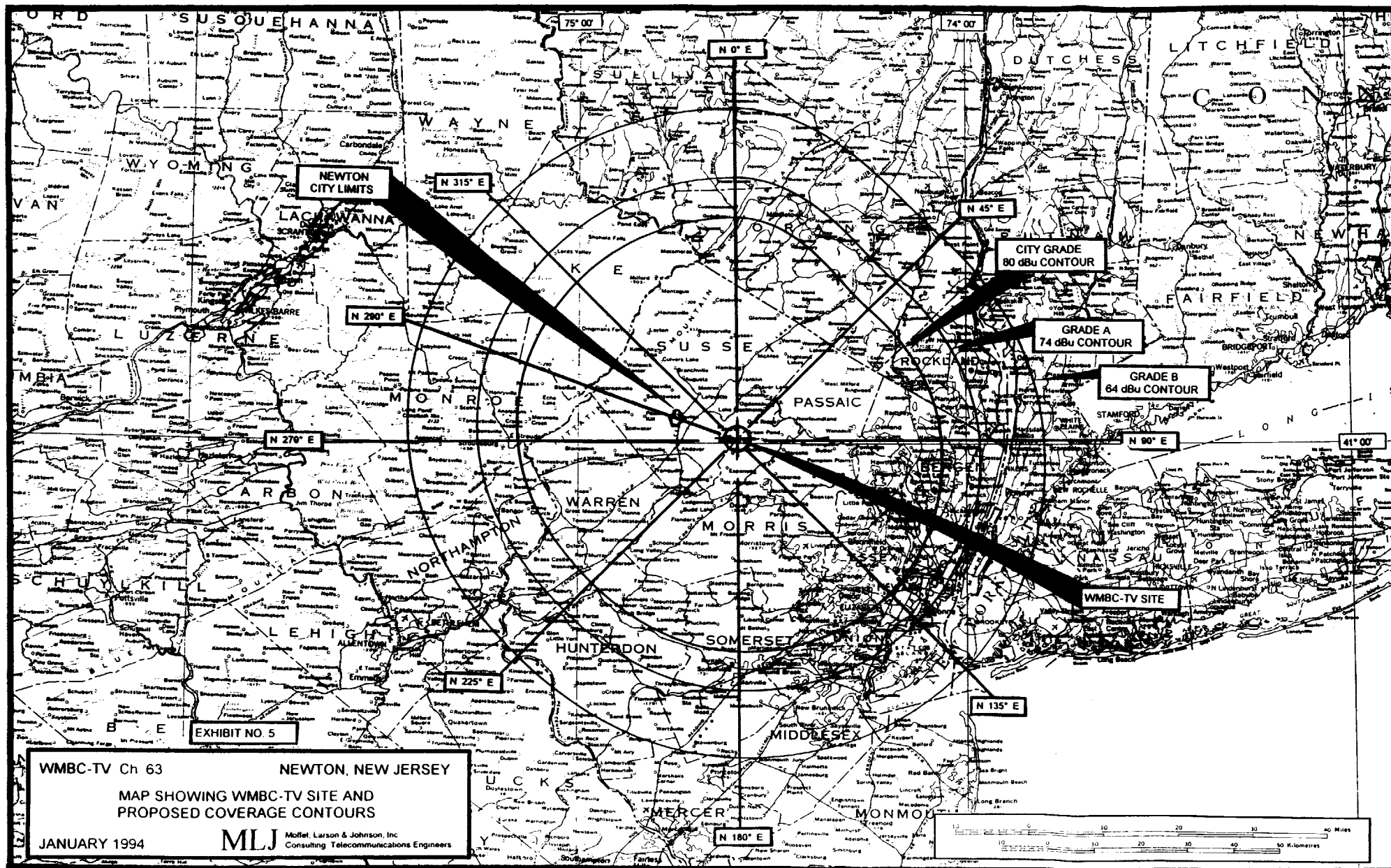
1. I am a Senior Engineer with the telecommunications engineering consulting firm of Moffet, Larson & Johnson, Inc.
2. The engineering sections of an application for improvement of the facilities of WMBC-TV, Newton, New Jersey, to be filed on January 18, 1994, were prepared by me or under my direction.
3. The Grade B contour WMBC-TV currently encompasses 13,389 sq. km and 9,482,899 persons. After the proposed improvement, the Grade B contour will encompass 14,719 sq. km and 10,954,430 persons, an increase of 9.9 percent in land area and 15.5 percent in population. The population figures are based on 1990 U.S. Census data.

Date:

1/18/94

By

J. C. KEAN



B

New York—New York

WABC-TV

Ch. 7

Network Service: ABC.

Licensee: American Bcstg. Companies Inc., 7 Lincoln Square, New York, NY 10023.

Studio: 7 Lincoln Square, New York, NY 10023.

Telephone: 212-887-7777. Fax: 212-887-3222.

Technical Facilities: Channel No. 7 (174-180 MHz). Authorized power: 64.6-kw visual, 6.46-kw aural. Antenna: 1611-ft. above av. terrain, 1727-ft. above ground, 1739-ft. above sea level.

Latitude 40° 42' 43"
Longitude 74° 00' 49"

Transmitter: World Trade Center.

Satellite Earth Stations: Andrew, 5.6-meter Ku-band; Vertex, 4.7-meter Ku-band; Andrew, W/A-Corn receivers.

AM Affiliate: WABC, 50-kw, 770 kHz.

FM Affiliate: WPLJ, 4.6-kw, 95.5 MHz (No. 238) 1300-ft.

News Services: ABC, AP, UPI.

Ownership: Capital Cities/ABC Inc. (Group Owner).

Began Operation: August 10, 1948.

Represented (sales): Capital Cities/ABC National TV Sales.

Represented (engineering): Smith & Powstenko.

Personnel:

Walter C. Liss, President & General Manager.
Thomas Kane, General Sales Manager.
Iris Osman, Local & National Sales Manager.
Scott Simensky, Local & National Sales Manager.
Henry S. Florsheim, Director of News.
James Baker, Director of Engineering.
Cliff Love, Director of Community Affairs.
Richard R. Graham, Director of Finance & Business Affairs.
Art Moore, Program Director.
Brigitte McCray, Director of Creative Services.
Sylvia Hueston, Director of Community Relations.
Anna Carbonell, Press Information Manager.
Patricia Liguori, Research Director.
Grace Frisone, Assistant Research Director.

Rates: On request.

City of License: New York. ADI: New York. Rank: 1.

Total Households: ©MSI Consumer Market Data as of 1/1/92. TV Homes, TV's and Circulation ©1992 Arbitron. County coverage based on Arbitron study.

Net Weekly Circulation	State County	Total Households	TV Households	%
50% & Over	CONNECTICUT			
	Fairfield	303,000	299,800	99
	NEW JERSEY			
	Bergen	312,700	310,900	99
	Essex	294,100	290,500	99
	Hudson	209,300	206,900	99
	Hunterdon	37,800	37,300	99
	Middlesex	241,400	239,600	99
	Monmouth	206,600	204,700	99
	Morris	149,800	148,800	99
	Ocean	174,500	173,000	99
	Passaic	162,500	160,900	99
	Somerset	88,600	87,800	99
	Sussex	46,000	45,400	99
	Union	184,700	183,300	99
	Warren	34,300	33,800	99
	NEW YORK			
	Bronx	451,100	444,900	99
	Dutchess	92,200	90,600	98



Net Weekly Circulation	State County	Total Households	TV Households	%
50% & Over	Kings	872,800	859,200	98
	Nassau	441,500	439,300	100
	New York	758,400	725,100	96
	Orange	102,900	101,200	98
	Putnam	29,100	28,700	99
	Queens	743,100	736,400	99
	Richmond	133,900	132,800	99
	Rockland	86,000	85,000	99
	Suffolk	432,700	428,900	99
	Sullivan	25,700	25,000	97
	Ulster	62,800	61,300	98
	Westchester	323,600	320,300	99
	PENNSYLVANIA			
Between 25-49%	Pike	11,500	11,200	97
	ALABAMA			
	Coosa	4,300	4,300	100
	CONNECTICUT			
	New Haven	305,500	301,800	99
NEW JERSEY	Mercer	121,000	119,400	99
	OHIO			
Between 5-24%	Morgan	5,200	5,100	98
	ARKANSAS			
Between 5-24%	Madison	4,600	4,500	97
	CALIFORNIA			
Alpine		500	400	89
	COLORADO			
Ouray		900	800	94
	CONNECTICUT			
Litchfield		66,600	65,500	98
	(Continued on page A-821)			
Station Totals		8,066,000	7,949,200	99
Net Weekly Circulation (1992)			6,294,000	
Average Daily Circulation (1992)			3,692,500	

New York—New York

WCBS-TV

Ch. 2

Network Service: CBS.

Licensee: CBS Inc., 51 W. 52nd St., New York, NY 10019.

Studio: 524 W. 57th St., New York, NY 10019.

Telephone: 212-975-4321. TWX: 212-867-7987.

Technical Facilities: Channel No. 2 (54-60 MHz). Authorized power: 21.4-kw visual, 4.02-kw aural. Antenna: 1578-ft. above av. terrain, 1577-ft. above ground, 1622-ft. above sea level.

Latitude	40°	42'	43"
Longitude	74°	00'	49"

Transmitter: North Tower, World Trade Center.

AM Affiliate: WCBS, 50-kw, 880 kHz.

FM Affiliate: WCBS-FM, 7.2-kw, 101.1 MHz (No. 266), 1300-ft.

News Services: AP, CBS, UPI.

Ownership: CBS Inc.

Began Operation: July 1, 1941.

Represented (sales): CBS Television Stations National Sales.

Personnel:

Carl (Bud) Carey, Vice President & General Manager.
James A. Clayton, Director of Sales.
Elliot Black, National Sales Manager.
Alice Flood, Director of Planning & Administration.
Dean Daniels, Director of News.
Jean Hodge, Director of Station Services.
Nesline Swaby, Manager of News Administration.
Barbara Terasaka, Director of Finance & Business Affairs.
Georges Carraha, Manager of Broadcast Operations.
James Picinich, Director of Broadcast Administration.
Joseph Fedele, Manager of Technical Operations.
Dolores Danska, Program Director.
Daniel Scher, Marketing Director.

Rates: On request.

City of License: New York. ADI: New York. Rank: 1.

Total Households: ©MSI Consumer Market Data as of 1/1/92. TV Homes, TV's and Circulation ©1992 Arbitron. County coverage based on Arbitron study.

Net Weekly Circulation	State County	Total Households	TV Households	%
50% & Over	CONNECTICUT			
	Fairfield	303,000	299,800	99
	NEW JERSEY			
	Bergen	312,700	310,900	99
	Essex	294,100	290,500	99
	Hudson	209,300	206,900	99
	Hunterdon	37,800	37,300	99
	Middlesex	241,400	239,600	99
	Monmouth	206,600	204,700	99
	Morris	149,800	148,800	99
	Ocean	174,500	173,000	99
	Passaic	162,500	160,900	99
	Somerset	88,600	87,800	99
	Sussex	46,000	45,400	99
	Union	184,700	183,300	99
	Warren	34,300	33,800	99



Net Weekly Circulation	State County	Total Households	TV Households	%
50% & Over	NEW YORK			
	Bronx	451,100	444,900	99
	Dutchess	92,200	90,600	98
	Kings	872,800	859,200	98
	Nassau	441,500	439,300	100
	New York	758,400	725,100	96
	Orange	102,900	101,200	98
	Putnam	29,100	28,700	99
	Queens	743,100	736,400	99
	Richmond	133,900	132,800	99
	Rockland	86,000	85,000	99
	Suffolk	432,700	428,900	99
Between 25-49%	Sullivan	25,700	25,000	97
	Ulster	62,800	61,300	98
	Westchester	323,600	320,300	99
	PENNSYLVANIA			
	Pike	11,500	11,200	97
	CONNECTICUT			
	New Haven	305,500	301,800	99
	NEW JERSEY			
	Mercer	121,000	119,400	99
	CONNECTICUT			
	Litchfield	66,600	65,500	98
Between 5-24%	PENNSYLVANIA			
	Monroe	37,000	36,400	98
	Northampton	94,200	92,900	99
	Wayne	15,600	15,100	97
Station Totals		7,652,500	7,543,700	99
Net Weekly Circulation (1992)			5,815,800	
Average Daily Circulation (1992)			3,092,800	